**Audio Engineering, Inc. *and* International Brotherhood of Electrical Workers, AFL–CIO, Local 364.** Case 33–CA–8924

May 14, 1991

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon an unfair practice charge filed on December 18, 1989, by the International Brotherhood of Electrical Workers, AFL–CIO, Local 364 (the Union), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 33, issued a complaint and notice of hearing on January 16, 1990, alleging that the Respondent, Audio Engineering, Inc., violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide information requested by the Union. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint.

On June 14, 1990, the General Counsel, the Union, and the Respondent filed with the Board a stipulation of facts and motion to transfer the case to the Board. The parties stated that the stipulation and the attached exhibits constituted the entire record in this case and that they waived a hearing and decision by an administrative law judge. On September 24, 1990, the Board approved the stipulation and transferred the proceeding to the Board for issuance of a decision and order.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and briefs, the Board makes the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent, an Illinois corporation with an office and place of business in Loves Park, Illinois, is engaged in the business of selling, installing, and servicing sound and alarm systems. During the 12-month period preceding execution of the stipulation, a representative period, the Respondent, in the course and conduct of its operations, purchased and received goods and materials valued in excess of $50,000 directly from sources outside the State.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

##### A. *Facts*

The Respondent and the Union were parties to a collective-bargaining agreement concerning wages, hours, and terms and conditions of employment of employees in the following appropriate unit:

> [A]ll employees of the Employer regularly engaged in installing, manufacturing, assembling and maintaining the following systems: sound and intercom, protection alarm (security), fire alarm, master antenna television, closed circuit television, low voltage control for computers and/or door monitoring, school communication systems, telephones and servicing of nurse and emergency call. This agreement also covers the installation and maintenance of transmit and receive antennas, transmitters, receivers, and associated apparatus which operates in conjunction with the above systems.

The most recent collective-bargaining agreement was in effect from July 1, 1986, through June 30, 1989. That agreement was entered into pursuant to Section 8(f) of the Act. On expiration of that contract, the Respondent and the Union commenced bargaining, but no new collective-bargaining agreement was reached.

Four months after the contract's expiration, by letter dated November 20, 1989, the Union requested that the Respondent furnish it with certain information related to transactions which had occurred prior to the contract's expiration. More specifically, the letter stated that

> [c]ertain questions have arisen as to whether Audio Engineering paid wages and fringe benefits in accordance with that contract, and Local 364 is now conducting an investigation for the purpose of making sure that the Company complied with its contractual obligations.
>
> Accordingly, Local 364 requests that the Company make the following information available to the Union for inspection:
>
> 1. Any and all payroll records of individuals who performed work covered by the Agreement for the Company, from July 1, 1986 through June 30, 1989.
>
> 2. Any and all time records, time sheets and/or work orders relating to work covered by the Agreement, which was performed by the Company from July 1, 1986 through June 30, 1989.
>
> 3. Any and all tax records involving the payment of state and federal taxes on behalf of individuals who performed work covered by the

Agreement for the Company, for the period July 1, 1986 through June 30, 1989.

At the time the stipulation of facts was entered into, no grievance had been filed by the Union regarding those matters that precipitated the information request. Moreover, the contract does not provide for a time limit within which a grievance must be filed. Since December 5, 1989, the Respondent has refused to provide the Union with the information it requested.

## II. CONTENTIONS OF THE PARTIES

The General Counsel and the Charging Party make the following arguments in support of their contentions that the Respondent violated Section 8(a)(5) and (1) of the Act when it refused to provide the Union with requested information concerning whether the Respondent had complied with certain aspects of the 8(f) contract, during its term, even though the request for information was made after the 8(f) contract expired. In John Deklewa & Sons,[1] the Board held that a contract entered into pursuant to the provisions of Section 8(f) of the Act is enforceable, during its term, by resort to Section 8(a)(5) of the Act, in the absence of the decertification of the union in a Board-conducted election. The duty to bargain in good faith embodied in Section 8(a)(5) of the Act includes an employer's duty to provide to a union, upon appropriate request, certain information. This includes information from the employer that is needed for the proper performance of the union's duty to police compliance with a collective-bargaining agreement. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). This principle is equally applicable during the term of an 8(f) agreement. *W. B. Skinner, Inc.*, 283 NLRB 989 (1987).

Here, the Union's efforts to verify compliance with the contract occurred after the expiration of the contract. Nevertheless, according to the General Counsel and the Charging Party, the requested information pertains to a question involving the satisfaction of obligations accrued under the expired agreement. The mere expiration of an 8(f) agreement, while extinguishing any statutory bargaining obligations that look only to the future, they argue, should not serve to limit the Union's ability, intelligently and effectively, to seek redress for noncompliance with the contract during its term. The General Counsel cites the Supreme Court's decision in *Nolde Bros. v. Bakery Workers Local 358*, 430 U.S. 243 (1977), as further support for his position that unsatisfied obligations, vested during a contract's term, are not extinguished by the mere expiration of the contract. Nolde compels arbitration of grievances filed after the expiration of a contract where the grievances concern rights accrued or vested while that contract was still in effect.[2] Likewise, the General Counsel argues, because the requested information pertains to obligations or duties embodied in the expired agreement, the Respondent has a duty to provide the Union with the information.

The Charging Party alleges that the Respondent's duty to provide the requested information should not be extinguished with the expiration of the contract because certain of the Respondent's obligations under the contract, such as the monthly, fringe-benefit contributions, did not become due until 15 days after the contract had already expired. Thus, all the documentation that the Union needed to verify compliance with these payments was not even available prior to the expiration of the agreement.

The Respondent primarily argues that because the agreement had expired over 4 months before the request for information was even made, the Respondent had no obligation to respond to the request. More particularly, the Respondent contends that: (a) it has no duty to provide to the Union information which is requested in order to determine whether the employer has complied with an expired collective-bargaining agreement that is not being renegotiated; (b) it does not have a duty to provide to the Union information requested for the purpose of enforcing an expired contract where the true reason for the request is to investigate a grievance; (c) until a proper request is made, an employer has no duty to supply information; and (d) it has no duty to provide the Union with information for the purpose of negotiations, when no such purpose was stated in the request. In regard to (b) and (d), the Respondent further submits that an unrevealed reason for requesting information cannot convert an invalid, revealed reason into a valid reason.

## III. DISCUSSION

The question is whether, under Section 8(a)(5) and (1) of the Act, the Respondent was obligated to furnish the Union with information on payroll records, timesheets, and tax records of individuals who performed work covered by the expired 8(f) agreement, when the request for the information was made 4 months after the expiration of the agreement. We find merit in the General Counsel's and Charging Party's position that the Respondent's failure and refusal to supply the requested information violated Section 8(a)(5) and (1) of the Act.

An employer's duty to provide information to a union is premised on the union's status as the exclusive representative of the employer's employees and

[1] 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB (John Deklewa & Sons)*, 843 F.2d 770 (3d Cir. 1988), cert. denied 109 S.Ct. 222 (1988).

[2] The Charging Party notes that the expired agreement contained a broad grievance and arbitration clause and set forth no time limit for filing grievances. Thus, according to the Charging Party, if the Respondent had provided the requested information to it and a determination had been made that Audio Engineering, Inc. had failed to comply with its obligations under the agreement, the Charging Party could have filed a grievance regarding the matter.

the union's resulting duty to perform as a bargaining agent. Thus, information must be furnished to the union for purposes of representing employees in negotiations and also for policing the administration of an agreement. Indeed, Section 8(d) defines ''the obligation to bargain collectively as including the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to . . . any question arising [under an agreement] . . . .'' A union's obligation to police the agreement need not terminate at the expiration of the agreement.

Here, the Union stated in its November 20, 1989 letter that ''[c]ertain questions have arisen as to whether Audio Engineering paid wages and fringe benefits in accordance with [the collective-bargaining agreement effective from July 1, 1986, through June 30, 1989].'' The fact that no grievance had been filed prior to the request is irrelevant. In *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967), the Supreme Court dealt with the employer's obligation to furnish information that allows a union to decide *whether* to process a grievance. The Court decided that the Board's discovery-type standard was appropriate. The fact that the contract contained a grievance-arbitration clause is relevant, however, because this clause certainly gives the union the right to continue its contract compliance function even after the expiration of the agreement.[3] *Nolde Bros. v. Bakery Workers Local 358*, supra, relied on by the General Counsel, is also instructive in this regard. There, the Supreme Court required arbitration of grievances after the expiration of the contract because the arbitration obligation created by the agreement survived its expiration in order to address situations which arose under the contract.[4]

In the instant case, the contract does not provide for a time limit within which a grievance must be filed. Thus, if the Union is able to gather evidence establishing that the Respondent did not comply with the expired contract, it may still file a grievance and seek redress over the matter.[5] Further, under the particular facts presented here, we find that the request for information filed 4 months after the expiration of the agreement was filed within a reasonable time. Thus, we hold that the mere expiration of the 8(f) agreement does not toll the Union's right to verify the Respondent's compliance with that agreement during its term. Accordingly, the Respondent's failure to provide the requested information to the Union, pursuant to the Union's legitimate interest in policing the Respondent's compliance with the agreement during its term, violated Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees of the Respondent performing work within the work jurisdiction represented by the Union constitute a unit appropriate for the purposes of collective bargaining.

4. At all times material to the request for information, the Union, by virtue of Section 8(f), was the limited exclusive representative of all the employees in the unit.

5. By failing and refusing to furnish the Union with requested information which is relevant and necessary to the Union's performance of its function as collective-bargaining representative, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

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[3] Cf. *Crittenden Construction Co.*, 298 NLRB 747 (1990) (the Board found that an 8(f) employer was obligated to supply relevant information about expired collective-bargaining agreements ''regardless of the current state of the parties' bargaining relationship''), and *Missouri Portland Cement Co.*, 291 NLRB 1043 (1988). (The Board ordered the respondent to meet with the union to process outstanding grievances even though the respondent had sold its company and dissolved the unit by terminating all the employees. The changed circumstances did not affect the grievances.)

[4] See also *Indiana & Michigan Electric Co.*, 284 NLRB 53 (1987).

[5] Relying on *Brazos Electric Cooperative*, 241 NLRB 1016 (1979), enfd. 615 F.2d 1100 (5th Cir. 1980), the Respondent defends its failure to provide the requested information on the basis that, inter alia, the Union gave no notice that the information was being requested for the purpose of processing or investigating grievances or for bargaining. In *Brazos*, a case, unlike here, involving a union's request for information regarding nonunit employees, the Board held at 1018:

> An employer is not obligated to honor a union's request for information when such request lacks both specificity and clarity and when the employer could not have been aware of the intent and purpose of the union's request. However, where the circumstances surrounding the request are reasonably calculated to put the employer on notice of a relevant purpose which the union has not specifically spelled out, the employer is obligated to divulge the requested information.

Here, the Union, in requesting information, stated a legitimate purpose—it was attempting to police compliance with the expired contract. At the time of the request, the Union did not know and could not state whether a grievance would be filed. As noted, however, a union is entitled to information necessary to decide whether to file a grievance. See *NLRB v. Acme Industrial Co.*, supra. Accordingly, the Union adequately stated to the Respondent a legitimate purpose for its information request and we thus reject the Respondent's defense in this regard. See *A-Plus Roofing*, 295 NLRB 967 (1989), and *W. B. Skinner, Inc.*, supra.

Finally, we note that the Respondent, in replying to the Union's request for information, stated, inter alia, that the Union's information request was for the purpose of ''harassment.'' The Respondent on brief does not argue, nor would the record support, that the Union sought the requested information in bad faith.

Specifically, we shall order the Respondent to promptly furnish the Union with the information requested in its letter of November 20, 1989, and to post the appropriate notice.

## ORDER

The National Labor Relations Board orders that the Respondent, Audio Engineering, Inc., Loves Park, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain collectively with International Brotherhood of Electrical Workers Local 364, AFL–CIO as the exclusive collective-bargaining representative of all employees of the Respondent performing work within the work jurisdiction represented by the Union, by failing or refusing to furnish the Union with information which is relevant and necessary to its function as the representative.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly furnish the Union with the information requested by its letter of November 20, 1989, pertaining to the payroll records, timesheets, and tax records reflecting work performed by individuals that was covered by the 8(f) agreement effective July 1, 1986, through June 30, 1989.

(b) Post at its Loves Park, Illinois place of business copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post an abide by this notice.

WE WILL NOT fail or refuse to bargain collectively with the International Brotherhood of Electrical Workers Local 364, AFL-CIO as the exclusive collective-bargaining representative of all our employees performing work within the work jurisdiction represented by the International Brotherhood of Electrical Workers Local 364, by failing and refusing to furnish said Local 364 with information which is relevant and necessary to its function as such representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL promptly furnish Local 364 with the information requested in its letter of November 20, 1989, pertaining to wages, timesheets, and tax records.

AUDIO ENGINEERING, INC.